

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.726 OF 1999

Shivaji Namdeo Ghumare
Occ.:Agriculture, r/o.Mahamdabad
(Hunnur), Taluka Mangalwedha
Dist.:Solapur ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.A.Apte for Appellant
Mrs.U.V. Kerjriwal, APP, for Respondent

CORAM: **V.G. PALSHIKAR &
SMT.NISHITA MHATRE, JJ.**

DATED: **MAY 5, 2005**

ORAL JUDGMENT (PER MHATRE, J.):

. This Appeal challenges the judgment and order of the Sessions Court convicting and sentencing the appellant for committing an offence punishable under section 302 of the Indian Penal Code.

2. As revealed from the evidence on record, the case of the prosecution is that the appellant was married to Neelabai 15 years prior to the incident. Their daughter Savita was married a few days prior to the incident. They had one son Anil aged about 9 years at the relevant time. On the night of 18.12.1997, the victim, Neelabai and her son Anil were at home in their

house situated in a field. According to the prosecution, the appellant struck a fatal blow with a spade on the head of Neelabai. Anil was threatened by his father, the appellant, not to disclose the incident to anybody and was also prevented from shouting. The appellant ran away from the hut after giving the fatal blow to the victim. Anil reported the incident to his grandmother after about 2 hours. A complaint was lodged against the appellant who was arrested on 20.12.1997. Blood stained clothes were recovered from him. The spade, which was the weapon used for the assault, was also recovered at his instance. According to the prosecution, the appellant dealt the blow on his wife because he suspected that she had illicit relations with some other person. After the appellant's arrest, he was tried for having committed an offence punishable under section 302 of the Indian Penal Code. The Sessions Court convicted and sentenced him to life imprisonment and payment of a fine of Rs.500/-, in default a further R.I. for one month.

3. The prosecution has relied on the evidence of 11 witnesses to establish its case. The principal evidence relied on by the prosecution is the deposition of PW5, Anil, the son of the appellant and the victim. His statement was recorded under section 164 of Criminal

Procedure code. According to Anil, he and his mother, the victim, were asleep on 19.12.1997 in their house. He heard a loud noise due to which he woke up. He found his father standing with a spade in his hand. He was warned by his father that he would also be killed if he told anybody about the incident. The father then ran away from the scene of offence. Anil remained in the house with his dying mother who had sustained the bleeding injury till about 4 am. He then went to his paternal grandmother and informed her of the incident. This statement was recorded immediately after the incident. However, in Court when Anil was examined by the prosecution, he stated that somebody had killed his mother while he was sleeping on the cot. He found his mother had died when he awoke to answer the call of nature. He did not see his father, the appellant, in the hut. This witness has been declared hostile.

4. PW7, who is the brother of the victim, has deposed to the fact that the appellant suspected that the victim had illicit relations with some other person. Two years prior to the incident, the appellant had sent the victim back to her maternal home because of his suspicions. The victim had resided in her maternal home for about six months. PW7 has stated that he pacified the appellant and told him that his suspicions were

unwarranted. Although the appellant permitted the victim to return to the matrimonial home, he continued to beat her because of his suspicions. This witness has also stated that he took Anil home and he had disclosed to them that the appellant had assaulted Neelabai on her head with the spade.

5. PW9, Gaurabai, who is the mother of the victim, has corroborated the evidence of PW7 Suresh. She has denied the suggestions made by the defendants that it was because there was some enmity between the appellant's family and her family that the complaint was lodged against the appellant.

6. Taking into consideration the evidence of PW5, 6 and 7, there is no doubt that the appellant has inflicted the injuries with a spade on the head of the victim. The Doctor who is examined as PW8 has opined that the injuries were such that caused a fracture of the scalp and damaged the brain resulting in shock and death thereafter. Obviously, therefore, the appellant had inflicted a fatal injury on the victim. The question which then remains is whether there was any intention on the part of the Appellant to kill the victim. There is no doubt that the motive for the act existed, namely, the suspected illicit relations of the

victim with some other person. However, the prosecution has failed to prove that there was any intention to kill the victim. Therefore, in our view, although the appellant has committed an act of culpable homicide, it does not amount to murder. The conviction and sentence under section 302, IPC is set aside. The accused is convicted instead under section 304-II, IPC and is sentenced to suffer imprisonment for seven years.

7. In the result, the Appeal is partly allowed.